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NASA Procedural Requirements

COMPLIANCE IS MANDATORY

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Request Notification of Change

(NASA Only)

Subject: Alternative Dispute Resolution for Discrimination Complaints

Responsible Office: Office of Diversity & Equal Opportunity

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Chapter 3. ADR Informal Process

3.1 The NASA Centers administer ADR programs at the informal stage of the EEO complaints process, with oversight from the Agency's Office of Diversity and Equal Opportunity. This chapter lays out the EEO ADR process at the informal stage.

3.2 Determining Appropriateness of Informal Complaint for Mediation

3.2.1 An individual who has sought EEO counseling shall be advised by the EEO Counselor of the option to receive traditional counseling or the opportunity to participate in ADR where the agency agrees to offer ADR in a particular case;⁵ and

3.2.2 Center management, in consultation with the EO Director and/or the Center ADR Manager, shall determine whether the informal complaint is appropriate for mediation.

⁵ EEOC Management Directive 110 states in this regard: Aggrieved individuals who seek pre-complaint counseling must be fully informed of: 1) how the agency ADR program works; 2) the opportunity to participate in the program where the agency agrees to offer ADR in a particular case; and 3) the right to file a formal complaint if ADR does not achieve a resolution. MD 110, Chap. 2, Sec. I(D).

3.3 Arranging for Mediation

3.3.1 While mediation may be productive at any time in the course of an EO dispute, mediation shall be attempted as soon as reasonably possible after the alleged discriminatory event, once an EEO Counselor has been contacted.

3.3.2 There may be time limits imposed by external processes (formal complaint filing, limits related to the Merit Systems Protection Board, Office of Special Counsel, union grievance processes, or others). While it is primarily the responsibility of affected parties to be aware of applicable filing deadlines and procedures, the EO Director and/or ADR Manager shall take reasonable steps to alert parties to the possibility of such limits.

3.3.3 The ADR Manager shall obtain the services of neutrals from sources external to the Center where the dispute arose, e.g., Shared Neutral Program, other agencies, contract mediators, or similar sources.

3.3.4. The ADR Manager shall identify a mediator and provide the mediator with the names of the parties to determine whether there is a potential or actual conflict of interest.

3.3.5 Mediators in training shall be allowed to observe or mediate at the discretion of the ADR Manager and with the advance consent of the parties.

3.3.6 The ADR Manager shall contact all the parties in the mediation and provide them with the name of the mediator(s).

3.3.7 The parties shall have an opportunity to request another mediator if the mediator is not acceptable to either party.

3.3.8 The ADR Manager shall provide the mediator with all pertinent documents needed to conduct the mediation.

3.3.9 The mediator shall contact the ADR Manager to assist in coordinating the mediation session(s).

3.3.10 The ADR Manager shall serve as the mediator's point of contact for onsite resources and support, such as logistical arrangements and access to the Center.

3.4 Monitoring the Progress of the Mediation

3.4.1 The ADR Manager, if other than the EO Director, shall keep the EO Director apprised as to the status of the mediation process.

3.4.2 The ADR Manager shall, in consultation with the EO Director, the mediator, and management, determine whether mediation should be terminated, for example, due to unreasonable delays or other evidence of lack of good faith by either party.

3.4.3 The complainant may also terminate the mediation and return to the EEO process at any time.

3.5 Settlement

3.5.1 If settlement is reached through mediation, the terms shall be reduced to writing by the mediator.

3.5.2 The Office of the General Counsel, the Office of the Chief Counsel, or the Counsel to the Inspector General shall review the agreement for legal sufficiency prior to obtaining all necessary signatures.

3.5.3 A representative of the EO Office shall also review the settlement agreement for conformance with EEO regulations and guidelines.

3.5.4 The settlement agreement shall be signed by the aggrieved individual and the settlement official. (See Appendix C.3.)

3.5.5 The Management representative shall consult with officials in the EO office, Office of the Chief Counsel, Office of the General Counsel, Counsel to the Inspector General, or Human Resources of the Human Capital Office, or other site officials, as appropriate, during the course of the settlement discussion.

3.5.6 Centers shall afford the aggrieved individual a reasonable opportunity to review the draft agreement and consult with a legal or other representatives prior to finalizing the agreement.

3.5.7 The following language shall be included in all settlement agreements:

If [insert name of aggrieved/complainant] believes that NASA has not complied with the terms of this agreement, she/he may request that the terms be specifically implemented, or alternatively, that the complaint be reinstated for further processing at the point ceased, in accordance with the procedures set forth in 29 C.F.R. §1614.504. Any such request must be made within thirty (30) calendar days of the date s/he knew or should have known of the noncompliance and must be forwarded to the DIRECTOR, COMPLAINTS MANAGEMENT DIVISION, OFFICE OF DIVERSITY AND EQUAL OPPORTUNITY, NASA HEADQUARTERS, WASHINGTON, D.C. 20546, with an explanation as to why she/he believes that the agreement has not been carried out.

3.5.8 If the complaint contains an allegation of age discrimination, the settlement agreement must contain the appropriate settlement provisions required by the Older Workers Benefit Protection Act (OWBPA). (See Appendix B.4.)

3.5.9 In the event the ADR Manager is aware of EEO complaints at other Centers by the same individual, the ADR Manager shall inform the EO Director, the Office of the General Counsel or the Office of the Chief Counsel, and the EEO ADR Management Team, where appropriate. Accordingly, Centers shall, wherever possible, seek global settlement, e.g. multiple cases involving the same aggrieved individual through the EEO ADR process.

3.5.10 The ADR Manager shall send a signed and dated copy of the settlement agreement to the EO Director and the Director, ODEO Complaints Management Division within five business days of the execution of the settlement agreement.

3.5.11 The Center EO Office shall be responsible for maintaining the original copy of the settlement agreement and for providing copies to ODEO and the Office of the General Counsel or the Office of the Chief Counsel.

3.5.12 The EO Director or the ADR Manager shall be responsible for ensuring that the terms of the ADR settlement agreement are carried out in coordination with appropriate stakeholder offices, such as the Office of the Chief Counsel and Office of Human Resources.

3.6 When Mediation Does Not Result in Settlement

3.6.1 If a resolution cannot be achieved, the mediator shall end mediation and notify the ADR Manager who, in turn, shall advise the EO Director.

3.6.2 The aggrieved individual shall be referred back to the EEO counselor for a final

interview and given his/her notice of a right to file a formal EEO complaint.

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